

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

September 21, 1999

DIVISION ONE

Court convened at 9:00 A.M.

Present: Spencer, P.J., Ortega, J., Vogel (Miriam A.), J., and S. Beaux, Deputy Clerk.

Each of the following:

B120775 People v. Stewart
B121269 People v. Lansing
B123842 People v. Meza
B124144 People v. Tillman
B124923 People v. Estrada
B124973 People v. Harris
B125111 People v. Williams
B125330 People v. Case
B125757 People v. Roberson
B126227 People v. Delmus B.
B126883 People v. Wright
B127875 People v. Janet C.
B128037 People v. Guerra
B128115 People v. Johnson
B128447 People v. Sergio S.
B129873 D.C.F.S. v. Charlotte G.
B130028 People v. Joseph D.

Argument waived, cause submitted.

B119342 The People
 v.
 Yuriy K.

Merits:

Argued by Knut S. Johnson for appellant and by Arthur H. Auerbach,
deputy attorney general, for respondent. Cause submitted.

DIVISION ONE (Continued)

B123209 Greenfield et al.
 v.
 Hartenbaum et al.

Merits:
Argued by Frank A. Weiser for appellants and by Paul H. Lusby for respondents. Cause submitted.

B107031 Gomez et al.
 v.
 Dinwiddie Construction Company et al.

Merits:
Argued by Herbert C. Rubinstein for appellants and by Joseph E. Deems for respondents. Cause submitted.

B131431 ICF Kaiser Engineers, Inc.
 v.
 S.C.L.A.
 (Sepulveda Hatteras Ltd, r.p.i.)

Merits:
Argued by Robert J. Stumpf, Jr. for petitioner and by Louis Lipofsky for real party in interest. Cause submitted.

B133147 Nellie A.
 v.
 S.C.L.A.
 (Dept. of Children & Family Services, r.p.i.)

Merits:
Argued by Merrill L. Toole for petitioner and by Pamela Soncini, deputy county counsel, for real party in interest. Cause submitted.

DIVISION ONE (Continued)

B119867 The People
v.
Sanchez

Merits:

Argued by John Lanahan for appellant and by Robert David Breton, deputy attorney general, for respondent. Cause submitted.

B121293 Antelope Valley Newspapers, Inc.
v.
Desert Mailer News

Merits:

Argued by Richard M. Ewaniszyk for appellant and by Michael Kirby for respondent. Cause submitted.

B122856 Rail Cycle
v.
City Council for the City of Commerce et al.

Merits:

Argued by Randy M. McElvain for appellant and by Richard S. Berger for respondents. Cause submitted.

Court adjourned.

DIVISION TWO

B125427 Hertz Corporation
v.
Trilling

(Not for Publication)

The judgment is affirmed.

Nott, J.

We concur: Boren, P.J.
 Zebrowski, J.

September 21, 1999-Continued

DIVISION TWO (Continued)

B126311 People (Not for Publication)
v.
Depaul

The Court:

The judgment is modified to reflect a \$200 fine pursuant to Penal Code section 1202.4, subdivision (b), and a \$200 fine pursuant to Penal Code section 1202.45. The latter fine shall be suspended unless appellant's parole is revoked. The abstract of judgment shall be amended to reflect these fines. As so modified, the judgment is affirmed.

Nott, Acting P.J., Zebrowski, J., Mallano, J. (Assigned)

B126635 People (Not for Publication)
v.
Abbott

The Court:

The judgment is modified to reflect a \$200 fine pursuant to Penal Code section 1202.45, said fine to be suspended unless appellant's parole is revoked; and a \$50 laboratory analysis fee pursuant to Health and Safety Code section 11372.5, subdivision (a); and a total of \$85 as penalty assessments pursuant to Penal code section 1464, subdivision (a) and Government Code section 76000, subdivision (a). The abstract of judgment is to be amended to reflect the parole revocation fine, the laboratory analysis fee and the penalty assessments. In all other respect, the judgment is affirmed.

Boren, P.J., Nott, J., Mallano, J. (Assigned)

DIVISION TWO (Continued)

B128039 Environmental World Watch (Not for Publication)
 v.
 Cummins Engine Co., Inc., et al.

The judgment is reversed. Respondents are to bear costs on appeal.

Nott, J.

We concur: Boren, P.J.
 Mallano, J. (Assigned)

B123056 Braille Institute of America, Inc., et al. (Not for Publication)
 v.
 Waters et al.

The judgment is affirmed.

Nott, Acting P.J.

We concur: Zebrowski, J.
 Mallano, J. (Assigned)

B125009 Kiewit Pacific Co. (Not for Publication)
 v.
 Metropolitan Water District of Southern California

The judgment is affirmed. MWD is awarded costs on appeal.

Nott, Acting P.J.

We concur: Zebrowski, J.
 Mallano, J. (Assigned)

September 21, 1999-Continued

DIVISION TWO (Continued)

B114290 People v. Ochoa (Not for Publication)

The judgment is affirmed.

Nott, J.

We concur: Boren, P.J.
Mallano, J. (Assigned)

B125432 People (Not for Publication)
v.
Christian A.

The matter is remanded for the juvenile court to correct its order to state that the maximum potential time in confinement is six months. With that singular exception, the order under review is affirmed.

Nott, Acting P.J.

We concur: Zebrowski, J.
Mallano, J. (Assigned)

DIVISION THREE

B121913 People (Not for Publication)
v.
Timothy R. Glen

The judgment is affirmed.

Aldrich, J.

We concur: Croskey, Acting P.J.
 Kitching, J.

DIVISION THREE (Continued)

B092068 People (Not for Publication)
v.
Francisco Javier Molina & Glen Reyes

The convictions for simple kidnapping and grand theft auto as to both defendants are reversed. The abstract of judgment shall be corrected to reflect simple life terms for the aggravated kidnapping convictions as to both defendants, and to reflect a great bodily injury enhancement as to defendant Molina. The trial court is directed to prepare an amended abstract of judgment reflecting these modifications and corrections, and to forward it to the Department of Corrections. As modified, the judgments are affirmed.

Kitching, J.

We concur: Klein, P.J.
Croskey, J.

DIVISION FOUR

[illegible]

The judgment is affirmed. The parties are to bear their own costs on appeal.

Hastings, J.

We concur: Vogel (C.S.), P.J.
Curry, J.

September 21, 1999-Continued

DIVISION FOUR (Continued)

B122930 Abraham (Not for Publication)
v.
Southern California Air Quality Mgt. District

The judgment is affirmed. Respondent to recover costs on appeal.

Hastings, J.

We concur: Vogel (C.S.), P.J.
Curry, J.

DIVISION FIVE

B122443 Edna Kuwahara (Not for Publication)
v.
20th Century Insurance Company

The judgment is affirmed in part; reversed in part. Each party is to bear its own costs on appeal.

Turner, P.J.

We concur: Armstrong, J.
 Godoy Perez, J.

B130221 Los Angeles County, D.C.F.S. (Not for Publication)
v.
Constance K.
In re Elena C.

The judgment is affirmed.

Turner, P.J.

We concur: Armstrong, J.
 Godoy Perez, J.

DIVISION FIVE (Continued)

B123376 Barbara Kalustian (Not for Publication)
v.
Foundation Health

The orders denying the defendant's motion to compel arbitration is reversed. The unconscionability finding is affirmed. On remand, the trial court shall vacate its order denying the motion of defendant, Foundation Health, a California Health Plan, to compel arbitration. The court shall enter a new order striking the unconscionable portions of the arbitration clause and enforcing the remainder of the agreement. Defendant, Foundation Health, is to recover its costs on appeal from plaintiff, Barbara Kalustian, individually and as successor in interest of Kale Kalustian, deceased.

Turner, P.J.

We concur: Armstrong, J.
 Godoy Perez, J.

B128830 People (Not for Publication)
v.
Verna Funchess

The judgment is modified to: award 14 days of presentence custody credit, which includes 4 days of conduct credits; increase the total criminal laboratory analysis fee to \$150; and impose penalty assessments of \$150 pursuant to Penal Code section 1464, and \$105 under Government Code section 76000. In all other respects, the judgment is affirmed.

Turner, P.J.

We concur: Armstrong, J.
 Godoy Perez, J.

September 21, 1999-Continued

DIVISION FIVE (Continued)

B126491 People (Not for Publication)
v.
Terry McKinley

The judgment is affirmed.

Weisman, J. (Assigned)

We concur: Armstrong, Acting P.J.
 Godoy Perez, J.

B133914 Genoveva Galvan
v.
Preco Industries et al.

Motion to set aside August 31, 1999 dismissal of the appeal is deemed to be a rehearing petition. Filed order denying petition for rehearing.

DIVISION SIX

B125721 People (Not for Publication)
v.
Passarelli

The trial court is directed to amend the abstract of judgment to reflect a \$200 restitution fine pursuant to section 1202.4, a suspended \$200 restitution fine pursuant to section 1202.45, and only one five-year enhancement pursuant to section 667, subdivision (a)(1). The trial court shall forward the amended abstract of judgment to the Department of Corrections. The judgment is otherwise affirmed.

Gilbert, Acting P.J.

We concur: Yegan, J.
Coffee, J.

DIVISION SEVEN

B115302 Filippo Industries, Inc. (Certified for Partial Publication)
v.
Sun Ins. Company of New York, et al.

The judgment is affirmed. The order denying judgment notwithstanding the verdict is affirmed as to Sun and reversed as to McGee. Appellants' appeal of order awarding attorneys' fees and to tax costs and Respondent's appeal for interest are denied as having been abandoned. Respondent's cross appeal for a new trial on punitive damages is denied as is its request to substitute Sun in for McGee's punitive damages. Sun to bear its own costs. Filippo to bear its own and McGees's costs on appeal.

Hay, J. (Assigned)

I concur: Lillie, P.J.
I concur and dissent: Woods, J. (Opinion)